IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.683 OF 2006

Jayant Agro Organics Limited — Petitioner
vs.
Union of India through the
Secretary & ors. — Respondents

Mr.V.Sreedharan with Mr.Prakash Shah, Mr.Bharat Raichandani i/b.M/s.PDS Legal for the petitioner.

Mr.M.I.Sethna, Senior Counsel with Mrs.S.V.Bharucha for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 21st March, 2006

P.C.

We heard Mr.V.Sreedharan, the learned counsel for the petitioner.

2. We are of the view that this writ petition is an abuse of process of court and wholly misconceived.

3. The petitioner, by means of this writ petition, seeks to challenge the order dated 9th December, 2005 passed by the Larger Bench of the Customs, Excise and Service Appellate Tribunal (for short, 'the Tribunal') answering the question that was referred to the Larger Bench by the two member Bench hearing the appeal. The appeal is yet to be disposed of.

4. The petitioner is 100% Export Oriented Unit and they

are said to be engaged in the manufacture of (a) Refined caster oil; (b) Hydrogenated Caster Oil; (c) Hydroxy Stearic and (d) Ricinoleic Acid etc.

5. The benefit of Central Excise exemption Notification No.8/1997-C dated 1st March, 1997 in respect of glycerine and crude sodium sulphate was denied by the Commissioner of Central Excise and Customs, Vadodara-I in the order in original dated 31st July, 2003. The petitioner filed an appeal against the said order before the Tribunal. The two member Bench, vide order dated 1st April, 2005 referred to the Larger Bench the following question:

> "Whether use of Filter Material Chemicals imported in the present case would still grant eligibility to exemption under notification no.8/97 for the reasons arrived herein above or the exemption is not eligible to Filter Sieve, chemicals etc. if used, as held in case of CCE Gunter vs. Asia Peroxide Ltd. 2004 (165) ELT 2001?"

6. Pursuant to the aforesaid reference, the Larger Bench heard the reference and by the order dated 9th December, 2005, answered the reference thus:

> "25. After carefully considering all aspects we are of the opinion that the decision of the Tribunal in the case of Asia Peroxide should prevail as the one which laid down the correct law. The ratio of that decision when applied to the present case would result in denial of the benefit of notification No.8/97 CE when imported bleaching earth and filter aids are used in the manufacture of refined and bleached castor oil out of which glycerine and crude sodium sulphate were

ultimately produced.

26. The reference is answered accordingly the Registry may place this decision before the Referral Bench for a final decision."

7. The learned counsel for the petitioner sought to contend that the Larger Bench in its order dated 9th December, 2005 went beyond the reference and dealt with the issues which were not referred.

8. We find no merit in the submission of the learned counsel for the petitioner, rather, the submission is fallacious. The two member Bench referred the matter to the Larger Bench on the question as to whether the petitioner was eligible for grant of exemption under Notification No.8/97 in the use of filter material chemicals imported by it **for the reasons arrived in the order** (emphasis supplied by us) or the exemption is not eligible to filter sieve chemicals etc. as held in the case of Asia Peroxide. Since in the order of reference, the two member Bench sought the decision of the Larger Bench on the question of eligibility in respect of use of filter material chemicals imported by the petitioner to the exemption under Notification No.8/97, for the reasons recorded in the order by the two member Bench, obviously, the Larger Bench had to consider those reasons recorded in the order by the two member Bench. Finally the Larger Bench held that the decision of the Tribunal in the case of Asia Peroxide

lays down correctness and when applied to the facts of the present case, would result in denial of benefit of Notification No.8/97 and answered the reference accordingly and sent the matter to the two member Bench for deciding the appeal. By no stretch of imagination can it be said that the Larger Bench went beyond the reference order or adverted to the aspects not referred to in the order of reference dated 1st April, 2005.

9. As per the order of the Larger Bench dated 9th December, 2005, it is now the two member Bench who shall decide the appeal. Such decision shall be amenable to statutory appeal under the Central Excise Act, 1944. Despite the availability of remedy of statutory appeal, the petitioner rushed to this Court in challenging the order dated 9th December, 2005. It was for this reason that in the beginning of the order, we observed that the writ petition is an abuse of the process of the Court and misconceived.

10. Writ petition is dismissed in limine.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)